

## Terms and Conditions

Before you use the website at [www.kakadusoftware.com](http://www.kakadusoftware.com) (**Website**), we need to set out our terms and conditions of use. These terms and conditions regulate your use of the Website and by using the Website you acknowledge and agree that these terms and conditions are the rules of access and use of the Website.

### 1 Parties

This is an agreement between you as a user of the Website (**User or you**) and Kakadu Software Pty Ltd ABN 28 622 830 335 (**Kakadu Company**).

By using the Website or creating an account on the Website, the User agrees to these terms and conditions. The Website is only available to legal entities and persons who are at least eighteen years old and are capable of forming legally binding contracts.

The User acknowledges and agrees that by checking the box and clicking the “submit” button, by registering yourself on our Website (for example, in order to download any Kakadu Software), or by using the Website, the User is agreeing to be bound by these terms and conditions. If the User does not accept these terms and conditions in their entirety, the User may not access or use the Website or download any Kakadu Software from it.

If the User agrees to these terms and conditions on behalf of an entity, the User represents and warrants that the User has the authority to bind that entity to these terms and conditions. In that event, the word “User” will refer to and apply to that entity.

### 2 Services

The Website provides information to Users, and the ability to contact Kakadu Company (**Services**). Under these terms and conditions, Kakadu Company provides the Services to Users.

The Services do not include a licence to the Kakadu Software. We offer licences to Kakadu Software, separately from the Services, in the following 2 categories:

- Demonstration Licences, in respect of which clause 3 below applies; and
- commercial licences. To obtain a commercial licence to the Kakadu Software you must agree to separate licence terms and conditions for that software (**Commercial Licence Terms**). The Commercial Licence Terms are agreed to by you in addition to these terms and conditions rather than as a replacement of these terms and conditions, but to the extent of any inconsistency between these terms and conditions and the Commercial Licence Terms,

the Commercial Licence Terms will prevail.

From time to time the Website will generate automated emails to Users, or Users will send emails and messages to Kakadu Company through the Website. Emails sent by the Website or through the Website are considered a part of the Services and are covered by these terms and conditions.

### **3 Demonstration licence**

Some of the Kakadu Software may be made available on our Website to be downloaded for demonstration purposes (a **Demonstration Licence**). To download a Demonstration Licence, you must register your name and email address using the form provided on the Website. After you register, a link will be sent to the email address that you provide via which you may download the Demonstration Licence.

In respect of Demonstration Licences that you download, the Kakadu Company grants the User a personal, non-exclusive, non-transferable and revocable licence to use the Demonstration Licence, for one year from the date of download, for demonstration purposes only. You may not:

- use the Demonstration Licence for any purpose other than for demonstration purposes. For example, you may not use the Demonstration Licence for internal library archiving purposes;
- commercially exploit the Demonstration Licence, including by providing any bureau or similar service;
- copy, alter, modify, adapt, translate and create derivative works of the Demonstration Licence;
- reverse engineer, decompile or disassemble the Demonstration Licence;
- sub-license, transfer or assign any Demonstration Licence;
- permit a third party to use the Demonstration Licence or disclose or provide the Demonstration Licence to a third party directly or indirectly (including redistributing or assigning the Demonstration Licence to any third party); or
- use any materials created or produced by the Demonstration Licence for any business purposes, or provide them to any third parties.

Neither the author of the relevant Kakadu Software, Professor Taubman nor Kakadu Company accept any liability arising from the use or re-distribution of the Kakadu Software. Without limiting clause 4, and to the extent permitted by law, Kakadu Company makes no warranties in relation to the Kakadu Software. Kakadu Company does not warrant that the Kakadu Software will be free from defects or errors, that performance of the Kakadu Software will be uninterrupted, the Kakadu Software will meet all User requirements or be fit for any particular purpose, the functions contained in the Kakadu Software will operate in combinations the User selects, or the results obtained from the Kakadu Software will be in accordance with User expectations.

Kakadu Company may terminate a Demonstration Licence at any time and for any reason, by written notice to you. On the expiry or termination of a Demonstration Licence, you must cease using it and delete all copies of it in your possession or control. After the expiry or termination of the Demonstration Licence, you must not download another Demonstration Licence, without our prior written consent. If you wish to obtain our consent for another Demonstration Licence, you can write to us using the details in clause 9.

## **4 Warranty and indemnity**

Kakadu Company does not represent, warrant or guarantee that:

- any information on the Website will be complete, reliable or accurate; or
- the User's access to the Website will be secure, available or uninterrupted.

The User warrants to Kakadu Company that the User has the full right, authority and ability to enter into these terms and conditions, and that the User will not post information to the Website or use the Website, the Services or any Demonstration Licence to do anything, or for any purpose, that is:

(a) a breach of:

(i) the *Competition and Consumer Law Act 2010* (Cth), *Privacy Act 1988* (Cth) or *Spam Act 2003* (Cth) or any other law which deals with commerce online; or

(ii) the *Copyright Act 1968* (Cth), *Trade Marks Act 1995* (Cth), *Designs Act 2003* (Cth), *Patents Act 1990* (Cth), or any other law which deals with intellectual property;

(b) a breach of any law of the Commonwealth of Australia, or any state or territory of Australia which binds the User or Kakadu Company, including criminal, personal injury, civil liability and defamation laws; or

(c) may bring Kakadu Company or its Associates into disrepute or otherwise negatively impact on the reputation or business of Kakadu Company or its Associates.

The User agrees to indemnify Kakadu Company and its associates for any loss suffered or cost incurred by Kakadu Company its Associates (as the case may be) as a result of the User's breach of the warranties given in this clause 4.

## **5 Limitation of liability**

Information, opinions, statements and content on the Website are provided for information purposes only and are not legal, financial, taxation, technical or expert advice. They must not be relied on by a User without first obtaining independent advice.

The User releases Kakadu Company and its directors, agents or employees of any liability arising (whether directly or indirectly) out of the User's use of a Demonstration Licence, the information provided on the Website or through the Website or any errors in, or omissions from information on the Website.

Kakadu Company will not be liable under any circumstances for any special, consequential, incidental, exemplary or indirect costs or damages, litigation costs, installation and removal costs, or loss of data, production or profit. Kakadu Company will also not be liable under any circumstances for any loss arising out of reliance on the information on or provided to the User through the Website or provided to a User by another User on the Website, nor any interruption, delay or impairment in the functioning, operation or availability of the Website or any Demonstration Licence, exposure to or transmission of any computer virus, internet access difficulties in connection with the Website, or malfunction in equipment or software.

Certain legislation including the Australian Consumer Law (**ACL**) in the *Consumer and Competition Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services or Demonstration Licences by us to you which cannot be excluded, restricted or modified. However, to the extent permitted by law, the parties agree that any implied terms are excluded from these terms and conditions.

The liability of Kakadu Company to any User for any claim under these terms and conditions must not exceed the lower of:

- (a) the amount of fees received by Kakadu Company from the User;
- (b) the cost of Kakadu Company re-supplying the Services or Demonstration Licence; or
- (c) the cost of Kakadu Company repairing the Services or Demonstration Licence.

The limitations under this clause 5 apply to any liability, arising from any cause of action whatsoever, whether in contract, tort (including negligence), strict liability or otherwise, even if

advised of the possibility of such costs or damages and even if the limited remedies provided in these terms and conditions fail of their essential purpose.

## **6 Agreement to policies**

By agreeing to these terms and conditions, the User agrees to Kakadu Company's privacy policy available

at [https://www.kakadusoftware.com/index.php?option=com\\_content&task=view&id=2&Itemid=2](https://www.kakadusoftware.com/index.php?option=com_content&task=view&id=2&Itemid=2)

**(Privacy Policy)**.

By agreeing to these terms and conditions, the User also agrees to Kakadu Company's other policies, as posted on the Website from time to time.

To the extent of any inconsistency between these terms and conditions and the policies of Kakadu Company (including the Privacy Policy) these terms and conditions will prevail.

If Kakadu Company runs a competition or promotion, the User will need to agree to the terms and conditions of that competition or promotion in addition to these terms and conditions.

To use the Website the User may be required to nominate a username and password. The username must be a valid email address. The User is entirely responsible for all activities that occur under that username and password and must ensure these remain confidential at all times.

The User must notify Kakadu Company immediately if they become aware of any unauthorised use of their username and password. Each username and password must be used by a single individual and is not transferrable.

## **7 Term and termination**

The term of these terms and conditions is from the date that the User first accesses the Website or uses the Services or Demonstration Licences until the agreement is terminated in accordance with this clause 7.

Kakadu Company may terminate these terms and conditions, as well as any Demonstration Licence under clause 3, at any time and for any reason by suspending, terminating, deleting or otherwise restricting the User's access to the Website or the Services.

The User may terminate these terms and conditions at any time and for any reason by ceasing to access the Website, or suspending, terminating, deleting or otherwise ceasing to use the Services or Demonstration Licence.

Unless otherwise agreed in writing, termination of these terms and conditions does not terminate any accrued rights of the parties prior to termination. Unless otherwise agreed in writing, a party must pay any amounts to another party which became due for payment under these terms and conditions prior to the date of termination.

## **8 Disputes**

A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 8.

A party claiming that a dispute, difference or question arising out of these terms and conditions, including a question as to whether certain services are in scope or not, has arisen (**Dispute**) must give the other party notice of the details of the Dispute (**Dispute Notice**).

When a Dispute Notice is given, the parties must refer the Dispute to the Chief Executive Officers, Managing Directors or other senior officers of each party for discussion and negotiation. If the parties cannot resolve a Dispute in accordance with this escalation procedure, either party may commence court proceedings.

The parties must continue to perform their respective obligations under these terms and conditions pending the resolution of a Dispute. Each party must pay its own costs of complying with this clause 8.

## **9 Notices**

Any notice, demand, consent, approval or communication under these terms and conditions must be in writing, in English and sent by email to [sales@kakadusoftware.com](mailto:sales@kakadusoftware.com) or to the User's email address provided.

## **10 Third party links and advertising**

The Website may display advertisements, which may or may not contain hyperlinks or buttons which take the User to websites operated by third parties. Kakadu Company does not endorse or recommend its advertisers, their products or services, or the information, products or services of any website linked to the Website.

If the User contacts a third party through the Website, including via email, Kakadu Company accepts no responsibility for any actions taken by that third party in connection with the User as

user of that third party's services. Any interactions with a third party website are not part of the Website or included in the Services.

## **11 General**

From time to time, Kakadu Company may post updated terms and conditions to the Website. Those updated terms and conditions will apply to all use of the Website from the time of posting onwards, and continuing use of the Website will be taken to constitute agreement to the revised terms and conditions. Otherwise these terms and conditions may be altered only in writing signed by each party.

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

Except where these terms and conditions expressly state otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under these terms and conditions.

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to these terms and conditions and the transactions contemplated by it.

Neither party may assign its rights or obligations under these terms and conditions without the prior written consent of the other party which may not be unreasonably withheld. Any assignment will only be effective if it is made by way of a deed of assignment and assumption between the assigning party, the continuing party and the incoming party.

A term or part of a term of these terms and conditions that is illegal or unenforceable may be severed from these terms and conditions and the remaining terms or parts of the term of these terms and conditions continue in force.

Any indemnity or any obligation of confidence under these terms and conditions is independent and survives termination of these terms and conditions. Any other term by its nature intended to survive termination of these terms and conditions survives termination of these terms and conditions.

Except where these terms and conditions expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

Unless otherwise stated, the rights, powers and remedies provided in these terms and conditions are in addition to and not exclusive of the rights, powers and remedies given by law independently of these terms and conditions.

If force majeure prevents a party from fully or partly performing any obligation under these terms and conditions (except an obligation to pay money), the affected party's obligation to perform that obligation is suspended while the force majeure continues.

These terms and conditions may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

These terms and conditions are governed by the law of the State of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

## **12 Interpretation**

In these terms and conditions, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning ;
- (c) a reference to a clause or schedule is to a clause of, or schedule to, these terms and conditions, and a reference to these terms and conditions includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to dollars, \$ is to US currency or Australian currency if the User is in Australia;
- (f) a reference to a party is to a party to these terms and conditions, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (k) any agreement, representation, warranty or indemnity in favour of two or more parties

(including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and

(l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these terms and conditions or any part of it.

Headings are for ease of reference only and do not affect interpretation.

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